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Criteria to assess the quality of the Informal Pro-active Approach Model

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Published in:
Proceedings of the EGPA Permanent Study Group

Publication date:
2012

Document Version
Publisher's PDF, also known as Version of record

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Marseille, A. T., & de Graaf, K. J. (2012). Criteria to assess the quality of the Informal Pro-active Approach Model. In D. C. Dragos, F. Lafarge, & P. Willemssen (Eds.), *Proceedings of the EGPA Permanent Study Group: Law and Public Administration* (pp. 126-143). Editura Economica.

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**33rd Annual Conference
of the European Group for Public Administration
Bucharest, Romania, September 2011**

**Permanent Study Group:
Law and Public Administration**

Proceedings

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Editura Economică

2012

ISBN 978-973-709-611-1

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Publicație finanțată de Autoritatea Națională pentru Cercetare Științifică,
prin proiectul
„A 33-a Conferință Anuală a Grupului European pentru Administrație Publică (EGPA)”,
conform contractului nr. 10119-21.07.2011.

Coordonator: prof. univ. dr. Lucica Matei

CRITERIA TO ASSESS THE QUALITY OF THE DUTCH INFORMAL PRO-ACTIVE APPROACH MODEL

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Abstract

If citizens in the Netherlands do not agree with a decision of a public authority, they can submit a written objection. The Informal Pro-active Approach Model (or “informal approach”) provides an alternative for the traditional conflict resolution procedures. This informal approach has led to a reduction in the number of objections that resulted in a formal decision and in an increase in the number of objections that resulted in an agreement between the parties in the conflict. However, there is a growing need to be able to assess whether the informal approach is in fact successful. This paper focuses on the question what set of criteria should be used to assess the quality of procedures, the informal approach and their outcomes. It is important that the criteria reflect the purpose of the informal approach: to provide a fair procedure leading to an acceptable and legitimate outcome of the dispute between the citizen and the public authority.

An assessment of four publications that formulate criteria relating to the course and outcomes of conflict resolution procedures and the analysis of the special features of the informal approach resulted in ten criteria that can be divided into three aspects: “Procedure”, “Outcome” and “Costs”. The “Procedure” aspect contains the criteria “interactive justice” (respect for individual/point of view, explanation about the procedure), “procedural justice” (in the narrow sense: equality of arms etc.), “usefulness of the mediating official” and “time”. The “Outcome” aspect contains the “satisfaction” with and “fairness” of the outcome, as experienced by citizens, and the (formal) outcome of the informal approach, as well as the legal quality of the outcome. The “Cost” aspect contains the criteria “financial costs” and “emotional costs”. In answering the question whether the informal approach is successful, discrepancies between the different aspects should be a point of departure for discussion about which aspects/elements of the informal approach need to be improved.

1. Introduction

If citizens in the Netherlands do not agree with a decision of a public authority, traditionally their only way of addressing this is through a formal written objection (submitted to the public authority that took the decision) or by appealing (through the administrative court). The use of the objection procedure as a method for conflict resolution with regard to administrative decisions has increased

dramatically over the last couple of years. In addition, the quality provided by government in connection with the objection procedure has been rated by citizens as very poor.

The *Informal Pro-active Approach Model* (IPAM or “informal approach”) provides an alternative for traditional conflict resolution procedures in public administration (objection procedures). The informal approach consists of the following intervention upon receiving a complaint or objection against an administrative decision:

- a civil servant ensures quick and direct personal contact with the citizen concerned (e.g. a phone call, sometimes followed by an informal meeting);
- the civil servant explores possible ways to resolve the issue in cooperation with the citizen (taking an open, unbiased approach, using communication skills such as listening, summarizing and questioning, and conflict resolution techniques).

Twenty different public authorities in the Netherlands have started “pioneer projects”, using the informal approach as an alternative for the formal objection procedure. This informal approach has led to a reduction in the number of objections that resulted in a formal decision and in an increase in the number of objections that resulted in an agreement between the parties in the conflict and – as a consequence – in the withdrawal of the objection (Van der Velden et al. 2010). However, there is the need to be able to assess whether the IPAM is in fact successful. As there is no specific method for the assessment of the success, this paper focuses on the following central question:

What set of criteria should be used to assess the quality of procedures using the Informal Pro-active Approach Model and their outcomes?

2. Strategy

To determine how successful the informal approach to dealing with objections is, criteria for assessing the success of this approach must be established. What should these criteria be? First of all, it is important that the criteria reflect the purpose of the informal approach: to provide a fair procedure leading to an acceptable and legitimate outcome of the dispute between citizens and a public authority. To establish criteria that meet this demands, we will first discuss four publications in which criteria relating to the course and outcomes of conflict resolution procedures have been formulated (Section 3). Then, we will investigate which of these criteria can be used to determine the success of the informal approach to handling objections and whether other criteria have to be added (Section 4). The final section (Section 5) contains concluding remarks.

3. Four sources of inspiration for establishing criteria

3.1. Introduction

To determine criteria for measuring the quality of the informal approach and its outcomes, inspiration can be drawn from studies of the course and outcomes of conflict resolution procedures. Four of these studies are discussed below. Each uses certain criteria to determine the quality and outcomes of conflict resolution procedures. For each study, a brief summary is given of the object of the study and of the criteria the researchers chose to measure the quality of the procedure and its outcomes.

3.2. Poitras & Le Tareau: quality of the agreement reached

Poitras & Le Tareau's (2009) approach focuses on the analysis of conflict resolution in workplace relations with the help of mediation. To what extent are the conflicting parties satisfied with the agreement reached? Poitras & Le Tareau observe that success is often measured only on the basis of whether or not an agreement is reached between the parties. If agreement is reached, then the mediation is regarded as successful; if no agreement is reached, it is not. However, is every agreement of the same quality?

Poitras & Le Tareau then present an overview of a large number of studies which assess the quality of agreements reached with the help of mediation on the basis of more indicators than just whether or not agreement between the parties is reached. Based on this analysis, Poitras & Le Tareau arrive at five criteria for determining the quality of the agreement reached with the help of mediation. These criteria are divided in three aspects:

Table 1

Poitras & Le Tareau: five indicators for the quality of the agreement reached

Process	Mediator's usefulness
	Procedural justice
Agreement	Satisfaction with the agreement
	Confidence in the agreement
Relationship	Reconciliation between the parties

The criteria are rated by asking the conflicting parties to what extent they think the mediator has played a useful role in reaching the agreement, to what extent requirements of "procedural justice" have been met during the mediation process, etc.

3.3. Barendrecht & Gramatikov: quality/justice of proceedings/outcomes of proceedings

The point of departure of Barendrecht & Gramatikov (2010) is to ask which factors determine whether or not those involved in civil proceedings regard those proceedings and their outcomes as fair or – to put it differently – acceptable (Barendrecht & Gramatikov 2010, p. 1104). Their ambition is to create an assessment instrument which enables the quality of civil proceedings and their outcomes to be measured and compared.¹⁷² Barendrecht & Gramatikov arrive at ten criteria for determining the acceptability of proceedings and their outcomes, grouped under three aspects.

Table 2

Barendrecht & Gramatikov: ten indicators of the quality of proceedings/outcomes

Quality of the procedure	Procedural justice (equality of arms etc.)
	Interpersonal justice (respect for individual and point of view)
	Informational justice (explanation of the procedure)
Outcome	Restorative justice (repairing the harm)
	Distributive justice (just outcome)
	Feasibility of the outcome (practicability)
	Transparency of the outcome (comparable with similar situation; well substantiated)
Costs	Direct costs in money (legal aid engaged)
	Indirect costs (finding and communicating with an adviser etc.)
	Emotional costs (stress etc.)

It is not entirely clear how Barendrecht & Gramatikov rate these various aspects. It seems likely that this is done by asking those involved for their assessment regarding the various aspects. However, Barendrecht & Gramatikov do say something about the weighting of the various aspects: “What we do not yet know exactly is what weight users of judicial proceedings assign to the various aspects of acceptability. This probably depends on the kind of procedure. (...) A good option is to leave the weighting to the user of the information obtained. The questions to be asked might include to what extent the outcome is worth the costs, time and emotions involved” (Barendrecht & Gramatikov 2010, p. 1108; Gramatikov et al. 2010). They see two options: the weighting can either be done by the users of the judicial system who are being asked to rate the various aspects of the proceedings, or it can be left to the policymakers for whom the research information has been gathered.

¹⁷² Specifically based on the experience of those involved.

3.4. Van Velthoven & Klein Haarhuis: results of conflict strategies

In the context of their study of the course and outcome of conflicts, Van Velthoven & Klein Haarhuis (2009) devote attention to the results attained by citizens when adopting certain strategies in response to a conflict. Van Velthoven & Klein Haarhuis distinguish five aspects. Formulated as questions, these are as follows:

Table 3

Van Velthoven & Klein Haarhuis: five indicators of results of conflict strategies

Results of conflict strategy adopted	Was the goal attained?
	Is the outcome fair?
	Has the conflict ended?
	Does the party involved have any regrets?
	Are there any side effects? ¹⁷³

The various aspects of the result of the strategy in question are rated by asking the parties involved to assess the results of their conflict resolution strategies.

3.5. Laemers et al.: citizens' wishes regarding procedures under the GALA

On the basis of a large number of studies over the past decade of procedures under the Dutch General Administrative Law Act (GALA) involving citizens, Laemers *et al.* (2007) ascertained citizens' wishes regarding several aspects of those procedures. These aspects are the procedure itself, the decision-maker and the position of the citizens themselves. This division leads to six factors which can be regarded as determining citizens' satisfaction with the course of procedures.

Table 4

Laemers et al.: six indicators of citizens' wishes regarding procedures under the GALA

Wishes regarding the procedure	Costs (incl. accessibility, fees, administrative costs)
	Time (duration of procedure, finality)
Wishes regarding the decision-maker	Treatment (courtesy, respect, honesty)
	Professionalism (impartiality, commitment, expertise, reliability)
Wishes regarding citizen's own position	Participation (being heard, participation in the process, influence on the process)
	Communication (information during the procedure, substantiation of decision)

¹⁷³ Compare the costs factor in Barendrecht & Gramatikov.

In view of the nature of this study, there was no question of rating the various indicators. Another special feature of Laemers et al.'s overview of citizens' wishes regarding procedures under the General Administrative Law Act is that it does not focus on the outcome of the procedure.

3.6. Summary

As the various studies have quite different approaches, it is impossible to compare the choice of certain criteria for determining the quality of conflict resolution procedures and their outcomes in all respects. For instance, Poitras & Le Tareau's study is the only one that refers to the role of the mediator as one of the factors for determining success (obviously the reason is that this study focuses on conflicts in which mediation has been used), and Laemers *et al.*'s study is the only one that makes finality a significant factor (which has to do with the fact that this study is about procedures under administrative law).

The criteria formulated by the various authors can be categorized under the headings "Procedure", "Outcome" and "Costs" and summarized as follows.

Table 5

The criteria categorized

	Poitras & Le Tareau	Barendrecht & Gramatikov	Van Velthoven & Klein Haarhuis	Laemers et al.
Procedure	Mediator			
	Procedural Justice	Procedural justice		Participation
		Interpersonal Justice		Treatment
		Informational Justice		Professionalism / Communication
				Timely, final
Outcome	Satisfaction			
	Confidence	Feasibility		
	Reconciliation		Conflict ended	
		Distributive Justice	Fair	
		Restorative Justice	Goal attained	
		Transparency		
			Side effects	
Costs		Direct		Costs
		Indirect		
		Emotional	Regrets	

4. Selecting criteria to determine the quality of the informal approach

This section discusses two questions. Which of the criteria listed above should be used to determine the quality of the informal approach and its outcome? Should other criteria than those listed be used to determine that quality?

4.1. The special features of the informal approach as a conflict resolution process

To determine which criteria are the best to assess the quality of the informal approach and its outcome, it is crucial for the criteria selected to correspond with the specific features of the informal approach. Another relevant point is that the conflicts in question always involve public authorities and administrative law. This raises the question: what is special about the informal approach as a conflict resolution procedure in comparison with other conflict resolution procedures? At least two features deserve special attention.

1. In the first place, solutions are sought for the conflicts in question in a relatively informal setting, with one of the public authority's representatives (to whom we will refer as the "mediating official") assuming a neutral position in order to help find a solution to the conflict.
2. In the second place, the conflicts are always about decisions of public authorities, that is, unilateral public law acts on the basis of powers involving little or no discretion.

What are the consequences of these two features of the informal approach for the assessment instrument?

1) Role of the mediating official

The fact that the informal approach involves a mediating official who adopts a neutral position means that an assessment of the mediating official's performance must be one of the decisive criteria for assessing the quality of the procedure and its outcome.

2) Decisions of public authorities as an object or aspect of the conflict

A consequence of the fact that the conflict is about a decision of a public authority is that the quality of the procedure and its outcome cannot be assessed only on the basis of various aspects of satisfaction among the parties involved in the procedure. What other factors should be taken into account in assessing the quality of the procedure and its outcome? To answer this question, we need to take a closer look at the special features of resolving conflicts relating to government decisions.

The traditional way to resolve conflicts relating to the exercise of administrative powers has been an appeal procedure at the administrative court, preceded by a

preliminary or objection procedure with the public authority in question. The conventional view has been that a conflict relating to a decision should not be resolved through *consultation* between the parties, but through a *unilateral decision*, either by the court, on the basis of testing the contested decision against the law, or by the public authority, after reconsidering both the legal and policy-related aspects of the decision.¹⁷⁴

The idea behind this is that the exercise of powers by a public authority is subject to boundaries. The public authority – particularly when it exercises powers under public law (and unlike natural and legal persons who perform juristic acts) – does not have full discretion in exercising its power. Every decision relating to the exercise of powers under public law is bound by the statutory rules governing the matter in question. These rules may mean that in exercising its powers the authority has a margin of discretion. However, this discretion is never unlimited; it is always subject to certain restrictions. Public authorities must use their discretionary powers consistently and within the limits of what is reasonable.

The consequence of this is that the possibilities for government authorities to modify the contested administrative decision in order to reach or carry out an agreement with an objector using the informal approach are sometimes limited. Assuming that a decision that has been challenged represents the lawful exercise of a public authority's power under public law, then it depends on two factors how much discretion there is for reaching a solution within the boundaries of the law. These factors are:

- discretionary power;
- the presence of a third party.

Discretionary power means that in response to an objection the public authority can investigate whether using its discretionary power in a different way can lead to a decision that is more in keeping with the interests of the objector. If a third party is involved, the public authority can see if that third party is prepared to waive some rights that are sufficiently certain or have already been granted for the sake of resolving the conflict with the objector.¹⁷⁵ Of course it is questionable to what extent solutions can be found which entail disregarding public law.

But even if the public authority has no discretion and there are no third parties, a meeting may be helpful. However, in that case the authority must limit itself to

¹⁷⁴ It is implicitly assumed that the decision will be accepted if it is consistent with the law.

¹⁷⁵ An example is a holder of a building permit who may, for the sake of peace, be prepared not to paint his dormer window pink, even though his permit allows him to do so.

explaining the situation or suggesting alternatives for the objector's problem, since it cannot be solved by reviewing the decision.

The authority's discretion can be categorized as follows.

Table 6

The authority's discretion regarding the informal approach to objections

		Discretion?	
		No	Yes
Third parties?	No	The public authority must limit itself to explaining the law and can help to find alternative solutions to the objector's problem	The public authority can also examine whether alternative application of its discretionary power is in the objector's interests
	Yes	The public authority can also see if the third party is prepared to agree not to exercise certain rights ¹⁷⁶	The public authority can work with its own discretion and with the third party

We can conclude that it is quite possible that the outcome of an objection procedure using the informal approach is disappointing in the eyes of the objector, while at the same time it is clear that the public authority has made maximum use of its discretion. This means that at least one of the criteria for assessing the quality of the outcome of the informal approach should relate to the extent to which the authority has succeeded in making maximum use of the discretion it has within the boundaries of the law.

None of the criteria referred to in Section 3 relates to whether the outcome complies with the law (lawfulness) and none of them reflects reasonable use of the authority's discretion (effectiveness). A criterion relating to these two factors might come under the heading "legal quality".

Apart from the extent to which the public authority has made maximum use of its discretion in order to help find a compromise, there is another criterion that is specifically relevant to the resolution of conflicts relating to administrative decisions. This is the "outcome of the informal approach". In the pioneer project four different outcomes of the informal approach were distinguished: "acceptance", "review", "creative solution" and "resumption of standard procedure" (Van der Velden *et al.* 2010, p. 74). In the light of the basic premises of the informal approach, the "acceptance", "review" and "creative solution" outcomes can be seen as positive, and the "resumption of standard procedure" outcome as negative, because the common goal – mutual agreement instead of an

¹⁷⁶ In some circumstances it will have to consider to what extent it can cooperate with a solution found by the parties which contravenes the law.

unilateral formal decision – wasn't reached. The reason is that if it turns out during the informal procedure that the contested decision is lawful, then the outcomes "acceptance" and "creative solution" are preferable to "resumption of standard procedure"; if it turns out that the public authority's decision can or must be revoked, then "review" (without resuming the formal procedure) is preferable to "resumption of standard procedure".

The explanation set out above of the special features of procedures under public law leads to the conclusion that at least the following two criteria should be used to determine the quality of the informal approach and its outcome: "legal quality" and "outcome of the informal approach".

4.2. The choice criteria in the light of the features of the informal approach

In view of the specific features and the context of this type of conflict resolution procedure, which of the criteria referred to in the four publications used as a source of inspiration can be used to determine the quality of the informal approach, in addition to the two criteria referred to in Section 4.1? To answer this question, we will take another look at the four sources of inspiration.

Poitras & Le Tareau

If we look at the five dimensions distinguished by these authors, the first thing that strikes us is that they relate only to the *agreement* reached. An informal approach to objections does lead to a certain outcome, but not necessarily to an agreement. This does not mean that Poitras & Le Tareau's criteria cannot provide inspiration for the construction of an assessment instrument; however, they may have to be formulated in a slightly different way.

Table 7

Poitras & Le Tareau adapted

P< original		P< adapted	
Quality of agreement		Quality of outcome	
<i>Process</i>	Mediator's usefulness	<i>Process</i>	Mediator's usefulness
	Procedural justice		Procedural justice
<i>Outcome</i>	Satisfaction with the agreement	<i>Outcome</i>	Satisfaction with the <i>outcome</i>
	Confidence in the agreement		Confidence in the <i>outcome</i>
<i>Relationship</i>	Reconciliation between parties	<i>Relationship</i>	Reconciliation between parties

The importance of one of the three dimensions distinguished by Poitras & Le Tareau – “relationship” – depends on the durability of the contact between the authority and the citizen. This factor is extremely important in conflicts in ongoing relationships. However, it is not always the case that after a conflict between a public authority and citizens the parties have to “continue to live together”. The relevance of this dimension to an assessment of the outcome of administrative conflicts will vary.

As regards “satisfaction with the outcome”, the first aspect of the “Outcome” aspect, it is very important for it to be clear what exactly is being assessed. Is it satisfaction in itself, or satisfaction in relation to the possibilities put forward by the public authority?¹⁷⁷

The criterion “confidence in the outcome” can only be given a positive rating if the informal approach has led to an agreement that the decision will be revoked.

Finally, the “Process” aspect. One of the two criteria is about the mediator, and the other about procedural justice. There is a lot to be said for this, particularly because when an objection is handled according to the informal approach model, it can be assumed that the role played by the mediating official has a considerable effect on the outcome and satisfaction with that outcome.

Barendrecht & Gramatikov

The first thing that strikes us in Barendrecht & Gramatikov’s categorization is that they are setting out to assess the same as what we want to know about the informal approach – namely, not only satisfaction with the outcome, but also the lawfulness of the outcome. Because they refer to an outcome rather than an agreement, there is a better match with procedure involving the informal approach.

If we then take a closer look at their three aspects and ten criteria, we can make the following observations. First, the “Process” aspect, which includes three criteria:

- procedural justice (equality of arms etc.)
- interpersonal justice (respect for individual and point of view)
- informational justice (explanation about the procedure)

The three-way distinction of procedural, interpersonal and informational justice is common, though sometimes a two-way distinction is also made; in that case there are two categories, procedural justice and “interactive” justice, which includes

¹⁷⁷ In which case it is also important whether or not the authority provided maximum room for negotiation.

both interpersonal justice and informational justice. Barendrecht & Gramatikov do not mention the role of the mediator because their assessment instrument is primarily focused on judicial proceedings. If we take Barendrecht & Gramatikov's categorization as a point of departure, then since the role of the mediating official is crucial in the informal approach, there is a lot to be said for distinguishing the following three aspects of the "Process" aspect:

- interactive justice (respect individual/point of view, explanation about the procedure);
- procedural justice (equality of arms etc.);
- usefulness of the mediating official.

Then, as regards the "Outcome" aspect, which includes four criteria:

- restorative justice (repairing the harm);
- distributive justice (fair outcome);
- feasibility of the outcome (practicability);
- transparency of the outcome (formal justice).

In addition to "feasibility of the outcome" (comparable with Poitras & Le Tareau's "confidence in agreement") Barendrecht & Gramatikov distinguish "restorative justice", "distributive justice" and "transparency of the outcome". In short, the first two are about what the party involved in the procedure stands to gain substantively (restorative justice) and how fair that party thinks the outcome is (distributive justice). Or to put it differently: "to what extent does the outcome reflect the party's original objective?" as opposed to "to what extent is the party satisfied with the outcome?". The "transparency of the outcome" criterion is more difficult to interpret, but in view of the description provided by Barendrecht & Gramatikov (in which they refer to elements including the possibility of comparing the outcome with outcomes in similar cases and equal treatment compared with other people in similar situations) this criterion is probably about the extent to which the outcome is convincing in the light of the relevant rules of law. This means that Barendrecht & Gramatikov's four criteria do justice to the wide variety of responses citizens may have to the outcome of a procedure relating to a decision of a public authority.

For example, an objector may find that the outcome of the procedure does not correspond to his original objective (there is no restorative justice), and think that the outcome is unfair (for instance, because in his opinion the statutory regulations that have been applied are too strict: no distributive justice), but that at the same time think that the outcome is transparent (he understands that the public authority had no choice) and also feasible (for example, because the public authority has not only explained why it made this decision, but has also made suggestions regarding an alternative solution to the problem).

Finally, the “Costs” aspect, which includes three criteria:

- direct monetary costs;
- indirect costs (‘opportunity costs’);
- emotional costs.

It is interesting that Barendrecht & Gramatikov are the only authors among those discussed here who pay detailed attention to costs. Perhaps the three criteria might be reduced to two: financial and emotional costs.

Van Velthoven & Klein Haarhuis

Van Velthoven & Klein Haarhuis refer to five criteria for assessing the success of a particular conflict strategy. They relate each of the five to the outcome.

- Was the goal attained?
- Is the outcome just?
- Has the conflict ended?
- Does the party involved have any regrets?
- Are there any side effects?

The first three (Was the objective achieved? Is the outcome just? Has the conflict ended?) more or less correspond to Barendrecht & Gramatikov’s criteria of “restorative justice”, “distributive justice” and “feasibility of the outcome”. In the light of the dimensions distinguished by Barendrecht & Gramatikov, the fourth criterion may have less to do with the outcome than with the costs, and in particular with the emotional costs. The “side effects” criterion is so broad that it is of little use to us.

Laemers et al.

Finally Laemers et al. As we have seen, these authors limit themselves to a single dimension: “Procedure”. They distinguish the following six criteria:

- costs;
- time;
- treatment;
- professionalism;
- participation;
- communication.

The first criterion they mention can be seen as corresponding with Barendrecht & Gramatikov’s “Costs” aspect. The “treatment”, “professionalism”, “participation” and “communication” criteria correspond to the three criteria included in Barendrecht & Gramatikov’s “procedural justice” dimension. The “time” criterion is unique, since it is not mentioned by any of the other authors; however, it is very

relevant to the informal approach. It covers both the duration of the procedure and the finality of the conflict resolution method.

The notion of “finality” requires some explanation. When the parties are all clear as to their legal position at the end of a procedure, the procedure can be said to have finality. This criterion is important in court proceedings (because sometimes finality is reached and sometimes it is not), but not in objection procedures; they always lead to finality, because the contested decision always either remains in place or it is revoked.

4.3. The criteria for determining the quality of the informal approach

Where does the analysis of special features of the informal approach and of four publications take us? The criteria to be chosen to assess the quality of the informal approach can be divided into three aspects: “Procedure”, “Outcome” and “Costs”.

Procedure

Four criteria can be distinguished under the “Procedure” aspect:

- interactive justice (respect for individual/point of view, explanation about the procedure);
- procedural justice in the narrow sense (equality of arms etc.);
- usefulness of the mediating official;
- time.

The “procedural justice in the broad sense” criterion can be sub-divided into several aspects. To keep the number of criteria under the “procedure” aspect within bounds, two aspects of procedural justice in the broad sense will suffice. One of these is the service provided to the citizen (Is the citizen treated with respect? Is he or she given enough information about the content of the procedure?). The other aspect is the content of the procedure itself (Does the citizen have sufficient opportunities to put forward his or her point of view? Does the citizen have an equal chance of success in the procedure?).

As regards the “contribution of the mediating official”, the important point is to what extent his or her attitude has a positive or negative influence on the course and outcome of the informal approach.

The “time” criterion speaks for itself: it refers to the time taken by the procedure.

Finally, perhaps the first two criteria can be merged into one: procedural justice in the broad sense (something similar to the criterion adopted by Poitras & Le Tareau).

Outcome

No fewer than seven different criteria regarding the “Outcome” aspect are distinguished by the various authors taken as a source of inspiration: satisfaction, confidence/feasibility, reconciliation/end of the conflict, restorative justice/goal attained, distributive justice/fairness, transparency and side effects. Which of these criteria should be included in our assessment instrument, in addition to the two criteria “legal quality” and “outcome of the informal approach” which, as we established in Section 4.1, should certainly have a place? In addition to “legal quality” and “outcome of the informal approach”, the criteria should include “satisfaction” and “fairness”. The reason for this choice is as follows.

The problem with the “restorative justice” criterion is that any rating will be very much determined by subjective factors, so that it says more about the citizen in question than about the features of the procedure in which that citizen has been involved. In our opinion, the “transparency” and “side effects” criteria are not sufficiently clear-cut. As we have already seen, the ‘transparency’ criterion may well say something about the extent to which the outcome is convincing in the light of the relevant rules of law, but the same is true of the “lawfulness and effectiveness” criterion introduced previously. We have also already pointed out that in the context of the relationship between a citizen and a public authority the “reconciliation” criterion is not always equally significant; sometimes there is incidental contact, and sometimes a more lasting relationship. In cases where it relevant, this criterion can be seen as being part of the “satisfaction” criterion. Two of the four remaining criteria relate to the perception of the party involved:

- satisfaction;
- fairness;

while the other two

- outcome of the informal approach;
- legal quality;

relate to more objective features of the outcome of the procedure.

Costs

Two criteria are sufficient for the ‘Costs’ aspect:

- financial costs;
- emotional costs.

The criteria selected for determining the quality of the informal approach and its outcome can be summarized in the form of a table.

Table 8

Ten criteria for determining the success of the informal approach

Procedure	1	interactive justice
	2	procedural justice
	3	usefulness of the mediating official
	4	time
Outcome	5	satisfaction
	6	fairness
	7	outcome of informal approach
	8	legal quality
Costs	9	financial costs
	10	emotional costs

4.4. Measuring the selected criteria

There are various ways of measuring criteria. A rating method should be chosen which is appropriate to the concept being measured. Measuring may entail *asking* someone something (for example, “are you satisfied with the way your objection was handled?”), *ascertaining* something (for example, the time it took to process an objection) or *assessing* something (for example, the extent to which the public authority has made maximum use of its discretion).

Some forms of measuring are more difficult than others. As a rule, it will be easier to determine how much time a certain procedure has taken than to assess to what extent the public authority has made good use of its discretion. The table below shows the most suitable way to measure the various criteria.

Table 9

Measuring the criteria for determining the success of the informal approach

	Criterion	Measuring method
<i>Procedure</i>	interactive justice	ask
	procedural justice	ask
	usefulness of the mediating official	ask
	time	ascertain
<i>Outcome</i>	satisfaction	ask
	fairness	ask
	outcome of the informal approach	ascertain
	legal quality	assess
<i>Costs</i>	financial costs	ask
	emotional costs	ask

Table 9 shows that an important way to determine the success of the informal approach is to ask citizens how they evaluate different aspects of the (outcome of

the) informal approach. For two criteria (the time the informal approach takes and the outcome of the informal approach) the table shows that they can be ascertained. One criterion – the legal quality of the outcome – has to be determined by an assessment of the content of the agreement.

5. Conclusion

In this article, we have analysed in which way criteria can be established to measure the success of the Informal Pro-active Approach Model (IPAM), or “informal approach”. The ten criteria we settled on reflect the two different dimensions of the evaluation of the course and the outcome of the informal approach. On the one hand, there are eight criteria that reflect the satisfaction of citizens with different aspects of the informal approach. Only two out of the ten criteria (“outcome of the informal approach” and “legal quality”) reflect the other dimension of the informal approach: the *content* and the *legality* of the outcome. It is important to stress that these two dimensions are not interchangeable. In measuring the success of the informal approach, it isn’t possible to simply add up the ten different criteria. The eight criteria that reflect the satisfaction of citizens with the informal approach and the two others represent two fundamentally different dimensions. “Greater satisfaction” can’t compensate for “poor legal quality”. As a consequence, in answering the question whether the informal approach is successful, the two different dimensions have to be distinguished and discrepancies between the two should be a point of departure for discussion about which aspects of the informal approach need to be improved.

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